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Administrative Review
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DATE: May 9, 2005

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

RE: Carbon and Certain Alloy Steel Wire Rod from Mexico (Period of Review: April 10, 2002, through September 30, 2003)

SUBJECT: Issues and Decisions for the Final Results of the 1st Antidumping Duty Administrative Review of Carbon and Certain Alloy Steel Wire Rod from Mexico.

Summary:

We have analyzed the case briefs and rebuttal briefs submitted by interested parties. As a result of our analysis, we have made changes in the margin calculations. We recommend that you approve the positions we have developed in the Discussion of Interested Party Comments section of this memorandum. Below is the complete list of the issues in this review for which we received comments from the parties:

I. List of Comments:

Hylsa Puebla S.A. ("Hylsa")

Comment 1: Minor Corrections

Comment 2: Transamerica Sales

Comment 3: Credit Insurance Premiums

Comment 4: Return Expenses Discovered at Verification

Comment 5: Interest Rates Used To Calculate Credit Expense

Comment 6: Hylsa's Warranty Expenses

Comment 7: Ministerial Errors

Siderurgica Lazaro Cardenas las Truchas, S.A. de C.V. ("SICARTSA")

Comment 8: Sales Made Within Extended Period of Time

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Comment 11: Expenses Related to Parent Company G&A

Comment 12: Adjustment to Financial Expense
- a. Net Interest Expense
- b. Foreign Exchange Gains and Losses
- c. Changes in Monetary Position
- d. Consolidated Packing Expenses

Comment 13: Major Input Test

Comment 14: Ministerial Errors

Comment 15: Treatment of Negative Dumping Margins

II. Background

On November 8, 2004, the Department published the preliminary results of its first administrative review of the antidumping duty order on carbon and certain alloy steel wire rod from Mexico. See Preliminary Results of Antidumping Duty Administrative Review of the Antidumping Duty: Carbon and Alloy Steel Wire Rod from Mexico, 69 FR 64722 (November 8, 2004) ("Preliminary Results"). From November 30 through December 10, 2004, the Department verified the sales and cost responses of Hylsa at its headquarters in Puebla, Mexico. On February 16, 2005, the Department extended the due date for these final results until May 9, 2005. See Notice of Extension of Time Limits for the Final Results of the Antidumping Administrative Review: Carbon and Alloy Steel Wire Rod from Mexico, 70 FR 7926 (February 16, 2005). The merchandise covered by this review is described in the Federal Register notice issued the same date as this memorandum. The review covers two manufacturers/exporters: (1) Hylsa and (2) SICARTSA. The period of review ("POR") is April 10, 2002, through September 30, 2003. We received case/rebuttal briefs from the petitioners[1] and Hylsa and SICARTSA.

[1] Petitioners are ISG Georgetown Inc., (formerly Georgetown Steel Company) Gerdau Ameristeel U.S. Inc., (formerly Co-Steel Raritan) and Keystone Consolidated Industries Inc.

III. Discussion of Interested Party Comments

HYLSA

Comment 1: Minor Corrections

Petitioners argue that the Department should not accept the minor corrections presented to the Department at the beginning of verification because, they claim, these corrections go beyond the standard definition of "minor corrections" permitted by the Department's standard verification guideline. See the Department's Verification of Hylsa's Sales and Cost Questionnaire (February 8, 2005) ("Hylsa's Sales and Cost Verification Report"), at 2 and Exhibits s-1 and c-1. Specifically, petitioners state that the Department's rules and regulations allow for accepting new information only when: "(1) the need for that information was not evident previously; (2) the information makes minor corrections to information already on the record; or (3) the information corroborates, supports, or clarifies information already on the record." See the Department's Verification Outline of Hylsa's Sales and Cost Questionnaire (October 29, 2004). According to petitioners, Hylsa's submission at the beginning of verification met none of these conditions. Petitioners allege that the errors presented at the beginning of the cost and sales verification were so pervasive that acceptance of such submissions would amount to accepting entirely new databases. Thus, petitioners assert that the Department should apply an adverse inference by (1) revising all home market price deductions by setting them to the lowest reported figure and (2) revising all U.S. price deductions to the highest reported figure for any transaction for these final results.

Hylsa disagrees with petitioners and states that the Department should accept the minor corrections presented on the first day of the cost and sales verifications. Contrary to petitioners claim, Hylsa argues, the Department's long-standing practice is to accept corrections to the submitted data, provided that the corrections do not amount to a new questionnaire response and the corrected data can be verified. According to Hylsa, the Department verified the nature of the errors and noted no discrepancies. See Hylsa's Sales and Cost Verification Report at 2 through 7 and 26. Based on the information verified by the Department and pursuant to the Department's request, Hylsa submitted revised U.S., home market, and cost databases. See Hylsa's Letter to the Department Concerning the Submission of New Databases Related to Corrections Presented at Verification (January 10, 2005) ("Hylsa's Letter to the Department"). Finally, Hylsa states that it is Department's responsibility to calculate the dumping margins based upon the most fair and accurate information. See e.g., Koyo Seiko Co., Ltd. v. United States, 36 F.3d 1565 (Fed. Cir. 1994). Thus, the Department should use the minor corrections information presented and verified by the Department for these final results.

Department Position

We agree with Hylsa. It is standard Department practice to accept corrections of minor errors identified by respondents at the outset of verification. See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan, 63 FR 8909, 8929 (February 23, 1998); see also, Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey, 62 FR 9737, 9746

(March 4, 1997). The errors identified by Hylsa were minor in that they affect only certain variables (e.g., other revenue charges; early payment discounts) with respect to a select percentage of sales, or were typographical errors in a description of a field (e.g., sales term codes; brokerage fees). Furthermore, the errors in question were minor errors presented by company officials at the outset of verification. See Hylsa's Sales and Cost Verification Report at 2 and Exhibits s-1 and c-1. The minor errors accepted by the Department at the beginning of verification served only to corroborate and clarify information on the record.

We disagree with petitioners that the Department should not correct the errors identified by Hylsa at the beginning of verification. The Department will accept minor corrections if the information corrects information already on the record, or the information corroborates, supports, or clarifies information already on the record. See Preliminary Results of Antidumping Duty Administrative Review: Elemental Sulfur from Canada, 62 FR 969, 970 (January 7, 1997), which outlines the conditions under which the Department will accept new information. Based on established verification procedures, we are satisfied that the errors presented at the outset of verification were minor, and we requested that Hylsa submit a revised database correcting for these errors for these final results. See Hylsa's Letter to the Department at 1. Therefore, we agree with Hylsa and will use the corrected databases for these final results.

Comment 2: Transamerica Sales

Petitioners argue that Hylsa's sales to the United States made through Transamerica should be treated as constructed export price ("CEP") sales. According to petitioners, the Department's verification established that Transamerica was actively involved in the process of selling the subject merchandise to the United States. See Hylsa's Sales and Cost Verification Report at 12. Specifically, petitioners state that Hylsa reported, and the Department verified, that Transamerica imported the merchandise, took legal title to the exports, invoiced its U.S. customer, and collected payment on the exported merchandise, and that these activities should qualify the affected sales as CEP sales. While Hylsa downplays Transamerica's role in the selling activities as that of a mere "secretary that types up the invoice," petitioners state that Hylsa's explanation is at odds with Transamerica's other activities, including taking title, acting as the importer of record, and receiving payment. See Hylsa's response to the Department's sections A-D Supplemental Questionnaire (October 7, 2004) at 3-5 ("Hylsa's Supplemental Response"); see also, Hylsa's Sales and Cost Verification Report at 12. For these final results, petitioners argue that the Department should classify these sales as CEP sales and include an amount for CEP selling expenses in the calculation of U.S price. Further, to calculate CEP selling expenses, petitioners claim that the Department should allocate all expenses incurred by Transamerica over all of its sales and then apply the resulting ratio to the prices of Transamerica's sales.

Hylsa disagrees with petitioners that Transamerica's role in the selling process rises to the level of requiring a CEP classification. According to Hylsa, all of the negotiations for these sales were handled directly between Hylsa's sales personnel and the unaffiliated customer, without any involvement by Transamerica. As verified by the Department, the customer's purchase orders were sent directly from the customer to Hylsa and the merchandise was shipped directly

from Hylsa to the U.S. customer. See Hylsa's Sales and Cost Verification Report at 2-3 and Verification Exhibit 22. Hylsa states that it coordinated all of the freight arrangements and customs clearance for sales, and acted as importer of record. See Hylsa's Sales and Cost Verification Report at Verification Exhibit 22. Furthermore, all post-sales activities were handled by Hylsa. Thus, according to Hylsa, Transamerica's role in the selling process was minor.

Citing AK Steel Corporation v. United States, 226 F.3d 1361 (Fed. Cir. 2000) ("AK Steel"), Hylsa states that, under the Department's current practice, sales are classified as CEP only where the first sales agreement with an unaffiliated customer was made by an affiliate of the exporter in the United States. According to Hylsa, the evidence in this case clearly demonstrates that the first sales agreement with the unaffiliated customer was made by Hylsa directly from Mexico. In view of Transamerica's insignificant role, these sales cannot properly be classified as CEP sales. Thus, Hylsa argues that the Department should continue to classify these sales as export price ("EP") sales for these final results.

Department Position

We agree with Hylsa. The sales made through Transamerica were made "outside the United States" as defined in the AK Steel decision and therefore should be treated as EP sales. See Hylsa's Sales and Cost Verification Report at 2-3 and Verification Exhibit 22.

The distinction between EP and CEP sales is made clear by AK Steel, where the U.S. Court of Appeals for the Federal Circuit ("CAFC") concluded that "{w}here the sale takes place and whether the foreign producer or exporter and the U.S. importer are affiliated" distinguishes CEP sales from EP sales. See AK Steel, 226 F.3d at 1368. We note that Hylsa and petitioners appear to agree on a central principle of the AK Steel decision - that it is the "location of the transaction" that finally determines whether the Department classifies sales as EP or CEP. See id. at 1369. The disagreement between the two parties centers on how we define when, and thus where, the "transaction" takes place. AK Steel, however, notes that the terms "sold" and "seller" are not themselves defined in the statute, and further states "{w}hen a word is undefined in the statute the agency and the reviewing court normally give the undefined term its ordinary meaning." See id. at 1371. The CAFC cited the *Black's Law Dictionary* (6th ed., 1990) definition of "seller" as "one who has contracted to sell property ... the party who transfers property in the contract of sale." Regarding the definition of "sold," the court cited one of its previous decisions, NSK Ltd. v. United States, 115 F.3d 965 (Fed Cir. 1997), in which it "defined 'sold' to require both a 'transfer of ownership' to an unrelated party and consideration." See id. at 975. Based on these definitions, the CAFC found in AK Steel that the sales under consideration in that case should be considered CEP sales because it was the U.S. affiliate of the Korean producers, and not any entity outside the United States, that contracted for the sale with the unaffiliated U.S. customers.

We found that the evidence on the record shows that the sale to the first unaffiliated customer was made outside the U.S. and that these sales should therefore be treated as EP sales. Because Hylsa's sales made through Transamerica were made in Mexico, there is no need to recalculate

the U.S. price associated with those sales using the CEP methodology. In this review, the record evidence shows that Hylsa in Mexico, not Transamerica, executed the sales contracts with unaffiliated customers in the United States for all of Hylsa's sales of steel wire rod made through Transamerica, and that Hylsa, not Transamerica, was the importer of record. See Hylsa's Sales and Cost Verification Report at 2-3 and Verification Exhibit 22. Further, we disagree with petitioners' contention that Transamerica acted as more than a communications link and processor of sales-related documentation for sales in question. Transamerica's role in invoicing was truly minor. Specifically, Hylsa's sales personnel prepared a spreadsheet indicating the amounts to be invoiced to the customer. This spreadsheet was later used as the invoice to the unaffiliated customer. The payment for the sales was made by wire transfer to an account set up by Hylsa's corporate unit in the name of Transamerica and these payments were transferred immediately to Hylsa. See Hylsa's Sales and Cost Verification Report at 2-3 and Verification Exhibit 22. Hylsa retained the final say in determining what terms of sale would be accepted, as well as handled all post-sale activities. Since Transamerica's role in these sales was minor and the sales occurred outside the United States, we will continue to treat these sales as EP sales for the final results.

Comment 3: Credit Insurance Premiums

Petitioners argue that insurance to cover credit losses for specific U.S. customers should be classified as "other direct selling expenses" rather than as indirect selling expenses for these final results. Hylsa reported that it took out insurance to cover credit losses for specific U.S. customers. See Hylsa's Response to the Department's Sections B-D Questionnaire (January 29, 2004) at 85 ("Hylsa's Section B-D Response"). However, Hylsa included these amounts as "American Credit Insurance" in the overall indirect selling expense ratio (DINDIRSU). Petitioners claim that these premiums should have been reported as a direct selling expense, since they relate directly to these sales. Accordingly, for these final results, petitioners contend that these insurance premiums should be allocated to the customer-specific sales and be deducted from the starting price as a direct selling expense.

Hylsa agrees with petitioners that the credit insurance premium on U.S. sales should be classified as a direct selling expense. Upon reviewing the credit insurance agreement, Hylsa has found that the premium was adjusted at the end of the year based on the actual level of sales during the year. Since the insurance premium varies directly with level of U.S. sales, it should have been classified as a direct selling expense. Hylsa further states that, if the Department decides to classify credit insurance as a direct selling expense, the Department should revise the indirect selling expense accordingly for these final results.

Department Position

We agree with both Hylsa and petitioners that we should classify the export credit insurance associated with these sales as a direct selling expense. Hylsa's insurance premium is a direct and unavoidable consequence of the sale (i.e., in the absence of sales to these customers, the corresponding premium would not have been incurred). Therefore, we have classified this expense as a direct selling expense and adjusted Hylsa's indirect selling expenses accordingly

for these final results. See Memorandum from Lyman Armstrong, Senior Financial Analyst and Jolanta Lawska, International Trade Analyst, to James Terpstra, Program Manager, Concerning Analysis Memorandum for Hylsa Puebla: Final Results of 2002-03 Administrative Review of the Antidumping Duty Order on Wire-Rod from Mexico, dated May 9, 2005 ("Hylsa's Final Calculation Memorandum").

Comment 4: Return Expenses Discovered at Verification

Petitioners argue that all expenses related to returns should be deducted from the starting price. In particular they refer to two observations for which sales were canceled and the merchandise was subsequently re-sold during the POR. See Hylsa's Sales and Cost Verification Report at 6. According to petitioners, it is Departmental practice to add all expenses (i.e., movement charges, travel-related expense, etc.) associated with the canceled sales to the re-sold merchandise. See Notice of Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Ecuador, 69 FR 76913 (December 23, 2004) ("Frozen Shrimp from Ecuador") and accompanying Decision Memorandum at Comment 10. Thus, petitioners state that the Department should make an adjustment to these two sales for these final results.

Hylsa disagrees with petitioners and argues that no adjustment is necessary. Specifically, Hylsa notes that the transactions at issue were sales of non-subject merchandise and have been removed from the reported sales database. See Hylsa's Letter to the Department. Since the two observations mentioned by petitioners have been properly removed from the reported sales database, no adjustment is necessary for these final results.

Department Position

We agree with Hylsa. Petitioners' reference to Frozen Shrimp from Ecuador is inapposite. In that case, the respondent was able to show that the items in question were tied to a particular customer during a particular period of the review and, more importantly, were subject merchandise. The items in question here relate to non-subject merchandise and have been removed from the reported sales database pursuant to the Department's instructions. See Hylsa's Letter to the Department; see also, Hylsa's Sales and Cost Verification Report at Verification Exhibit s-1. Since these sales have been removed from the reported sales database, no adjustment is necessary for these final results.

Comment 5: Interest Rates Used To Calculate Credit Expense

Petitioners argue that the Department should apply an adverse inference with respect to Hylsa's credit expense calculations. According to petitioners, Hylsa stated that it had no peso or dollar short-term borrowing during the POR and therefore used published rates in calculating its credit expense. See Hylsa's Section B-D Response at 35 and Appendix B-10. At verification, Hylsa again stated that neither Hylsa nor its corporate parents ("Hylsa, Hylsamex, or Alpha") had short-term borrowings during the POR. See Hylsa's Sales and Cost Verification Report at 19. Hylsa directed the Department's verifiers to the 2002 and 2003 "consolidated working papers for the balance sheet," claiming that this worksheet demonstrated that Alfa "did not have any short-

term borrowings from banks" and that all borrowings were instead "from non-banking institutions." See Hylsa's Sales and Cost Verification Report at 19 and Exhibit s-10.

According to petitioners, a review of this documentation reveals contradictory evidence. Under the account "Prestamos Bancarios C.P." (i.e., "short-term bank loans"), there was a balance for Alfa and its subsidiaries. Verification clearly confirmed that Hylsa's reported dollar and peso interest rates based on published sources were incorrect. Further, petitioners note that, while the accounts are labeled "short-term bank loans," there is no rule that short-term borrowing from "non-banking institutions" is somehow exempt from reporting for purposes of the Department's questionnaire. Therefore, for these final results, the Department must apply an adverse inference to the U.S. and home market credit calculations by setting the home market credit to zero and the U.S. credit to the highest reported per-unit expense.

Hylsa disagrees with petitioners and states that the Department should continue using its preliminary credit calculations for these final results. According to Hylsa, neither it nor its corporate parents (Hylsa, Hylsamex or Alpha) had short-term borrowings during the POR from financial institutions. See Hylsa's Section B-D Response at 35 and 81. First, as explained to the Department's verifiers, the line for "Prestamos Bancarios C.P." includes not only short-term borrowings, but also stock exchange borrowings and accounts payable on long-term transactions, such as *fideicommissions* (trusts established under Mexican law). Second, the remainder of the total "short-term" amount related to Alfa's subsidiaries Versax and Sigma, which have no involvement in the production and sale of subject merchandise. Finally, the Department verified Hylsa's response and noted no discrepancies. See Sales and Cost Verification Report at 18. Since Hylsa Puebla, Hylsa Norte, Hylsa, Hylsamex, and Alpha had no short-term borrowings, Hylsa properly calculated the credit expense using publicly available rates. Therefore, no adjustment is necessary with respect to Hylsa's credit expense for these final results.

Department Position

We agree with Hylsa that we should continue to use the published rates to reflect Hylsa's own borrowing experience for purposes of calculating home market and U.S. credit expenses. Policy Bulletin 98.2 states:

> (i)n cases where a respondent has no short-term borrowings in the currency of the transaction, we will use publicly available information to establish a short-term interest rate applicable to the currency of the transaction. For foreign currency transactions, we will establish interest rates on a case-by-case basis using publicly available information, with a preference for published average short-term lending rates.

In this review, Hylsa had no short-term borrowings in connection with either U.S. or home market transactions. As stated in the verification report, the line for "Prestamos Bancarios C.P." includes not only short-term borrowings, but also stock exchange borrowings and accounts payable on long-term transactions *(fideicommissions)*. The Department verified these amounts and confirmed that the amounts related to companies involved in the production or sale of subject merchandise reflected only the current accounts payable on long-term transactions with

fideicommissions. Further, the Department confirmed that the remainder of the total "short-term" amount related to Alfa's subsidiaries Versax and Sigma, which have no involvement in the production and sale of subject merchandise. See Sales and Cost Verification Report at 18. Since neither Hylsa nor its parent company had short-term borrowings, we accepted Hylsa's published rates in accordance with the above-referenced policy bulletin. Therefore, no adjustment is necessary to Hylsa's home market or U.S. credit expense for these final results.

Comment 6: Hylsa's Warranty Expenses

Petitioners argue that the Department should use the historical average warranty expenses reported by Hylsa instead of the warranty expenses reported for the POR. According to petitioners, Hylsa submitted a three-year warranty history, by market, for the subject merchandise, as required by the questionnaire. See Hylsa's Supplemental Response at Appendix SB-2. Petitioners state that a review of this documentation shows that the POR and annual figures vary greatly and that the three-year period is a more reflective of Hylsa's historical warranty experience. Thus, the Department should recalculate Hylsa's warranty expense for these final results.

Hylsa disagrees with petitioners and argues that the Department should continue to use the warranty expenses reported for the POR for these final results. According to Hylsa, the Department's normal practice is to base the warranty calculation on the respondent's experience during the review period. The fact that warranty expenses vary from year to year does not provide a justification from departing from normal practice. Finally, in this case, the Department was able to verify that warranty expenses had been properly calculated. See Sales and Cost Verification Report at 19 through 20 and Verification Exhibit 12. Therefore, the Department should use reported POR warranty expenses that were verified by the Department for these final results.

Department Position

We agree with petitioners. Warranties typically extend over a period of time that is longer than the POR and complete information for the reviewed sales is often not available at the time the questionnaire response is received; because of this we collect information on these expenses extending over a three-year period. This allows us to evaluate whether the expenses reported for the POR are reasonable. See Notice of the Final Determination of the Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada, 59 FR 18795 (April 20, 1994) ("Wire Rod from Canada"). In this review, we requested Hylsa to provide us with the average warranty expenses for the three-year historical period, based on the subject merchandise and extending beyond the POR period they reported. See Hylsa's Supplemental Response at Appendix SB-2. A review of this information shows that the POR and annual figures vary greatly and that the three-year period is a more reflective of Hylsa's warranty experience. See Hylsa's Final Calculation Memorandum. See Hylsa's Final Calculation Memorandum. Pursuant to our practice, we have recalculated Hylsa's warranty expense, using a three-year average expense, which we feel is more reflection of Hylsa's historical experience, instead of the POR expense.

Comment 7: Ministerial Error

Hylsa argues that the Department should not have made any "commission offset" in its margin calculation for Hylsa. As explained in its questionnaire response, Hylsa did not pay sales commissions on either its home market or U.S. sales of subject merchandise during the POR. See Hylsa's Supplemental Response at 80. However, in the preliminary margin calculation program the Department incorrectly set the home-market commissions (CMCOMMIS) equal to the home-market indirect selling expenses and inventory carrying costs (HMICOMMMX* &EXRATE +HMICOMMUS) instead of the home-market commissions (COMMH), which in this case is zero. Hylsa requests that the Department correct this error for these final results.

Petitioners did not comment on this issue.

Department Position:

We agree with Hylsa. The purpose of the commission offset is to avoid unfair comparisons of two different markets; one which is net of a commission expense, and another in which no commission expense was deducted. In this case, Hylsa had no commissions in either the U.S. or home market. See Hylsa's Supplemental Response at 80. Therefore, no commission offset should have been applied. We have corrected this error for these final results. See Hylsa's Final Calculation Memorandum.

SICARTSA

Comment 8: Sales Made Within Extended Period of Time

Petitioners argue that SICARTSA did not report its home market sales two months after the date of the last U.S. sale. Therefore, according to petitioners, the Department should disregard any sales below cost rather than applying the usual 80 percent threshold. Petitioners assert that it is the Department's standard practice to consider all sales in the reporting period. Petitioners cite section 773(b) of the Tariff Act of 1930 ("the Act") stating that below-cost sales are disregarded when (a) the sales were made within an extended period of time in substantial quantities, and (b) were not at prices which permit recovery of all costs within a reasonable period of time.

SICARTSA argues that it reported costs for the specific period requested by the Department. SICARTSA explained that it did not report home market sales or cost of production ("COP") for October and November 2003 because that data would never have been considered contemporaneous with the reported U.S. sales. SICARTSA explains that the most contemporaneous months include the three most recent months prior to which the U.S. sale was made and the two months following the month in which the U.S. sale was made. See 19 CFR 351.414(e)(2)(i)(ii)(iii).

Department Position

We agree with SICARTSA. In the Department's original questionnaire issued December 9, 2003, the Department defines contemporaneous sales as follows:

> "In administrative reviews of existing antidumping orders, on the other hand, the Department normally compares the export price (or constructed export price) of an individual U.S. sale to an average normal value for a "contemporaneous month."

The preferred month is the month in which the particular U.S. sale was made. If, during the preferred month, there are no sales in the foreign market of a foreign like product that is identical to the subject merchandise, the Department will then employ a five-month window for the selection of contemporaneous sales. For each U.S. sale, the Department will calculate an average price for sales of identical merchandise in the most recent of the three months prior to the month of the U.S. sale. If there are no such sales, the Department will use sales of identical merchandise in the earlier of the two months following the month of the U.S. sale. If there are no sales of identical merchandise in any of these months, the Department will apply the same progression to sales of similar merchandise. See 19 CFR 351.414(e)(2)(i)(ii)(iii). Therefore, since SICARTSA's last U.S. sale during the POR is in July 2003, it reported home market sales in August and September 2003, which are the two months after the last U.S. sale.

In addition, we disagree with petitioners' claim that the below-cost sales are not made within an extended period of time, in substantial quantities, and were not at prices which permit recovery of all costs within a reasonable period of time. The "extended period of time" under section 773(b)(1)(A) of the Act normally will coincide with the period in which the sales under consideration for the determination of normal value are made (see 19 CFR 351.406(b)). In this case, the home market sales in our analysis were made over a 21-month period and SICARTSA reported its costs based on the actual costs incurred during the POR (April 2002 through September 2003). Furthermore, we found either identical or similar matches to the U.S. sales without having to utilize the home market sales for October and November 2003.

Comment 9: Use of Actual Yield Factor

Petitioners argue that the Department should not round the yield factor down to calculate the cost of processing liquid steel into billets. Specifically, petitioners claim that SICARTSA reported a rounded down yield factor for processing liquid steel into billets based on a ratio of MT consumption to MT of production. For these final results, petitioners argue that the actual ratio should be used, and reported costs should be adjusted accordingly.

SICARTSA argues that it did use the actual yield factor in its responses to the Department's questionnaire. Further, SICARTSA explains the Department's practice is to calculate costs using the data submitted by the producer where that data reasonably reflect the costs associated with the production of the subject merchandise. See Notice of Final Results of Antidumping Administrative Review: Circular Welded Non-Alloy Steel Pipe and Tube From Mexico, 62 FR 37014, 37021 (July 10, 1997) ("Pipe and Tube from Mexico"). SICARTSA claims that the Department should not adjust their reported direct material costs for minuscule rounding differences.

Department Position

We disagree with petitioners. SICARTSA did not round down to the hundredths place, as claimed by petitioners. We reviewed SICARTSA's Section D cost responses to the Department's questionnaire and noted it used a yield factor set to the tens of thousandths place to calculate direct material costs. Furthermore, it is the Department's practice to calculate costs based on the records of the producer if such records are kept in accordance with the Generally Accepted Accounting Principles ("GAAP") of the producing country and reasonably reflect the costs associated with the production of the subject merchandise. See Pipe and Tube from Mexico. Therefore, no adjustment to the reported costs is warranted.

Comment 10: Costs Related to Plant Shutdowns

Petitioners argue that SICARTSA should not have reduced its reported cost of liquid steel production to adjust for costs related to a riot and a melt shop explosion which forced the plant to shut down. Petitioners assert that the record shows that the riot was related to an "illegal employment dispute" at SICARTSA's facility. See SICARTSA's September 15, 2004, Supplemental Response ("SICARTSA's Supplemental A-C Response") at Exhibit 6 (Grupo Villacero, Financial Statement at note 14). Petitioners allege that the expenses related to the riot are not extraordinary expenses as claimed by SICARTSA.

Even though SICARTSA claims these expenses are extraordinary, petitioners argue that plant shutdowns are not extraordinary expenses and should be considered part of SICARTSA's cost of manufacture. See Silicomanganese from Brazil Final Results of Antidumping Duty Administrative Review, 60 FR 37869, 37870 (July 8, 1997) (Silicomanganese from Brazil); see also, Notice of Final Determination of Sale at Not Less than Fair Value: Greenhouse Tomatoes from Canada, 67 FR 8781 (February 26, 2002), and accompanying Decision Memorandum at Comment 2.

Furthermore, petitioners explain that, in order to be considered extraordinary, an event must be "unusual in nature and infrequent in occurrence." Petitioners cite Floral Trade Council of Davis, Calif. v. United States, 16 CIT 1014, 1016 (1992) ("Floral Trade Council"); see also, Notice of Final Determinations of Sales at Not Less Than Fair Value: Low Enriched Uranium From the United Kingdom, Germany and the Netherlands, 66 FR 65886 (December 21, 2001) and accompanying Decision Memorandum at Comment 23. Petitioners argue that whether the episode in question was a peaceful strike or an illegal labor strike accompanied with civil unrest, the reality is that strikes are a fact of life in the steel manufacturing industry. Therefore, they are not unusual in nature or infrequent in occurrence.

With regard to the melt shop explosion at the plant, petitioners state that the Department has determined that a fire is not an extraordinary event. See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8932 (February 23, 1998) ("Semiconductors From Taiwan"), and accompanying Decision Memorandum at Comment 26. According to petitioners, in Semiconductors From Taiwan, the Department stated that fires were fairly frequent occurrences at semiconductor facilities. Therefore, petitioners argue that the plant closure related to the riot and melt shop explosion should not be ignored; instead, the associated costs should be included in the variable overhead of COP.

SICARTSA claims that the Department properly excluded extraordinary costs arising from political riots and the melt shop explosion from COP. SICARTSA claims that the Department has consistently looked to the definition of an extraordinary cost under the GAAP of the country at issue and U.S. GAAP to determine whether to treat costs as extraordinary and exclude them from COP. According to SICARTSA, both Mexican and U.S. GAAP define an extraordinary cost as one rising from an event that is unusual in nature and that occurs infrequently. See GAAP Practice Manual Vol. I, Aftermath B., Allan, Warren, Gorham & Lamont (New York), GAAP Release, March 2003, Section 23.3.1. Thus, for a cost to be treated as extraordinary under Mexican and U.S. GAAP, the underlying event must be unusual in relation to the ordinary activities of the business, and infrequent in occurrence or not reasonably expected to occur in the foreseeable future. See Floral Trade Council, 16 CIT at 1016.

Furthermore, SICARTSA claims that political riots occurred in Lazaro Cardenas, Mexico in December 2001 and January 2002 and that the riots spilled over onto its plant and it suspended operations when an employee was killed trying to enter the plant and others were threatened. In addition, SICARTSA states that petitioners are wrong when they equate this event with a typical labor strike, and claim that the event was a normal everyday occurrence. SICARTSA claims that an event of such severity and adverse impact cannot reasonably be considered foreseeable or likely to recur. For the above reasons, SICARTSA claims the independent auditor removed the related expenses from cost of goods sold ("COGS").

Moreover, SICARTSA claims that its liquid steel plant explosion in February 2002 caused a complete cessation of all steel production for more than a quarter of a year. It claims it was forced to buy liquid steel and billets from other suppliers at substantially higher prices than its own COP. SICARTSA claims that this explosion was also extraordinary, and that its independent auditor removed the related expenses from the calculation of COGS and reclassified them as extraordinary.

Department Position

We disagree with petitioners. Our standard practice when the POR covers two fiscal periods is to use the general and administrative ("G&A") expenses from the financial statements from the most recently completed fiscal year (i.e., 2003) that most closely corresponds to the POR. See Final Results and Partial Rescission of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Taiwan, 67 FR 76721 (December 13, 2002), and accompanying Decision Memorandum at Comment 10. In this case, the POR includes portions of fiscal years 2002 and 2003. Thus, we requested SICARTSA to report its G&A expenses based on the 2003 audited financial statements. See SICARTSA's Supplemental A-C Response at Exhibit 6. The costs arising from political riots and a plant explosion occurred before the POR, in December 2001 through February 2002. SICARTSA identified these expenses as a "Special Item" and "Extraordinary Cost" on its fiscal year 2002 financial statement, and expensed them in that year. Therefore, the argument about whether or not to include or exclude these expenses as extraordinary expenses in the COP is moot because these expenses were recorded in the 2002 financial statements which were not used in the calculation of the G&A ratio for the final results.

Comment 11: Expenses Related to Parent Company G&A

Petitioners argue that the Department's practice is to include in G&A expenses an allocated portion of the parent company's G&A expenses if the parent company provides services to its subsidiaries. See Notice of Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from Portugal, 67 FR 60219 (September 25, 2002) ("Sulfanilic Acid from Portugal"), and accompanying Decision Memorandum at Comment 4. Further, petitioners argue that the Department has explained that the principle behind such an allocation is that general expenses incurred by a parent company, without operations, relate to all of its subsidiaries which allows the Department to allocate a portion of general costs to the cost of producing subject merchandise. See Notice of Final Results of Antidumping Duty Administrative Review: Porcelain on Steel Cookware from Mexico, 63 FR 38373, 38375 (July 16, 1998).

Thus, petitioners argue that the Department must include in G&A an amount for services provided by SICARTSA's parents, Siderurgica del Pacifico and Grupo Villacero. Petitioners argue that there is evidence on the record supporting such an adjustment, since the parent companies' financial statements record management expenses separately from sales expenses. Further, petitioners argue that no amount is reflected for management expenses on SICARTSA's 2003 financial statements and that the parent companies' financial statements include corporate expenses in support of all subsidiaries. Therefore, petitioners argue that the Department should add an amount for management services provided by the parent companies to SICARTSA's G&A expenses. Further, petitioners suggest using the amount for management services provided by Grupo Villacero, since they believe Siderurgica del Pacifico's management expenses are included in Grupo Villacero's management expenses.

SICARTSA claims that the Department will allocate a portion of a parent company's G&A expenses to an affiliated company only if two criteria are met: (1) "the parent company provides services to its subsidiaries," and (2) the affiliate is not invoiced directly for those services. See Sulfanilic Acid from Portugal. SICARTSA claims that in this case neither of these criteria is met.

First, SICARTSA asserts that there is no evidence that either Siderurgica del Pacifico or Grupo Villacero provided any services to SICARTSA. SICARTSA claims that the expenses referenced by petitioners as management expense are in fact G&A expenses. SICARTSA claims that the English translation provided by SICARTSA for the Siderurgica del Pacifico and Grupo Villacero financial documents in Exhibit 8 and Exhibit 6 in their Supplemental Cost Response regarding G&A Expenses mischaracterizes these expenses. SICARTSA argues that any reference to management expenses should be substituted by "administrative expenses." In addition, SICARTSA claims that the expenses in question were calculated by aggregating the data of the subsidiaries covered by the respective statements. See SICARTSA's Supplemental A-C Response at Exhibits 6 and 8.

Second, SICARTSA claims that its record demonstrates that SICARTSTA was invoiced and paid for all good and services received from affiliates. SICARTSA argues that this is made clear from the detailed notes to the 2003 financial statement of SICARTSA, Siderurgica del Pacifico, and Grupo Villacero. See Note 4 of SICARTSA's Supplemental A-C Response at Exhibit 6.

Department Position

We agree with SICARTSA that the Department will allocate a portion of a parent company's G&A expenses to an affiliated company if two criteria are met: (1) "the parent company provides services to its subsidiaries," and (2) the affiliate is not invoiced directly for those services. See Sulfanilic Acid from Portugal. In this particular review, the record evidence indicates that affiliates are invoiced for goods and services.

First, with regard to the translation referenced by petitioners, we agree that SICARTSA mistranslated "Gastos de administracion" in the parent company's financial statements. However, the phrase was correctly translated in SICARTSA's audited financial statements as "administrative" expenses in Exhibit 6 of the September 15, 2005, supplemental response. Therefore, contrary to petitioners' comments in their brief, the expenses labeled "management expenses" in the parent company's (Grupo Villacero) financial statements are not indicative of SICARTSA receiving administrative services.

Second, the Department's questionnaire requested SICARTSA to report in G&A expenses an amount for administrative services performed on its behalf by its parent company or other affiliated party. In Exhibit 7 of its October 8, 2004, supplemental response, SICARTSA did not report that it received any administrative services from its parent company. See SICARTSA's Supplemental D Response at Exhibit 7. Furthermore, as SICARTSA states in its rebuttal brief, Note 4 of its 2003 audited financial statements indicates that related parties bill each other for goods and services. We also note that Note 5 of Grupo Villacero's 2003 audited financial statements indicates that related parties bill each other for goods and services. See SICARTSA's Supplemental A-C Response at Exhibit 6. Thus, based on SICARTSA's responses, there is no indication that SICARTSA received any services from its parent company for which it was not billed. Therefore, we have relied on the G&A expense as reported by SICARTSA pursuant to section 782(e) of the Act, with the minor adjustment described below in Comment 12.

Comment 12: Adjustment to Financial Expense

Petitioners argue that several corrections need to be made with regard to SICARTSA's reporting of financial expenses.

a. Net Interest Expense

Petitioners claim SICARTSA failed to demonstrate that its reported offset to net interest expenses was based solely on short-term interest income.

SICARTSA argues that the Department should not adjust its reported financial expense factor. SICARTSA claims that petitioners are incorrect in assuming that it included long-term interest income in the reported net interest expense offset. SICARTSA claims that it properly reduced interest expenses only for short-term interest income. SICARTSA argues that it responded fully to the Department's questions and the Department chose not to verify SICARTSA's responses. Therefore, the Department has no legal grounds to make adverse inferences with respect to this item.

Department Position

We agree with SICARTSA that it properly reported net interest expenses including only short-term interest income in its financial expense ratio. See Exhibit 7 of the October 8, 2004, supplemental questionnaire response. The Department's questionnaire asked SICARTSA to reduce the amount of interest expense incurred by any interest income earned by its company on short-term investments of its working capital. SICARTSA responded completely and accurately to the Department's questionnaire. Therefore, we have relied on the net interest expense reported by SICARTSA pursuant to section 782(e) of the Act.

b. Foreign Exchange Gains and Losses

Petitioners argue the Department should adjust the reported financial expense to account for the net exchange losses from Grupo Villacero's 2003 Consolidated Income Statement line item labeled "Exchange Losses, net." Petitioners assert that it is the Department's practice to compute financial expenses using all foreign exchange gains and losses at the consolidated level. See Notice of Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke in Part: Certain Steel Concrete Reinforcing Bars from Turkey, 68 FR 23972 (May 5, 2003).

SICARTSA argues that the adjustments it made to the total exchange loss are consistent with those made in the original investigation. First, SICARTSA argues that the exchange losses attributable to accounts payable to suppliers should be treated as a G&A expense. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Indonesia, 66 FR 49628 (September 28, 2001), and accompanying Decision Memorandum at Comment 3. However, SICARTSA states that, if the Department accepts petitioners' argument and includes exchange losses related to accounts payable to suppliers, then the Department must remove these losses from G&A expenses. Second, SICARTSA argues that it reduced the reported total exchange losses by the amount related to servicing long-term debt, since it is the Department's practice to include only the current portion related to debt. See Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod From Canada, 63 FR 9182, 9187 (February 24, 1998). Third, SICARTSA argues that it is the Department's practice to remove exchange gains related to accounts receivable from the total exchange losses.

Department Position

We agree with petitioners that it is the Department's practice to include the entire amount of the net foreign exchange gain or loss in the financial expense ratio calculation. See Silicomanganese from Brazil: Final Results of Antidumping Duty Administrative Review, 69 FR 13813 (March 24, 2004), and accompanying Decision Memorandum at Comment 14. As we explained in the Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from India, 68 FR 11045 (March 7, 2003), the Department instituted a change in practice regarding the treatment of foreign exchange gains and losses effective with the publication of that notice. Under the prior practice the Department asked respondents to identify the source of all foreign exchange gains and losses (e.g., debt, accounts receivable, accounts payable, bank deposits, etc.) at both a consolidated and unconsolidated level. At the consolidated level, only the current portion of foreign exchange gains and losses generated by debt or bank deposits was included in the financial expense ratio. At the unconsolidated level,

foreign exchange gains and losses on accounts payable were either included in the G&A ratio or, under certain circumstances, in the cost of manufacturing. Foreign exchange gains and losses on accounts receivable at both the consolidated and unconsolidated producer levels were excluded.

Under the new practice, instead of identifying foreign exchange gains and losses separately by source and level of corporate structure, we would normally include in the financial expense ratio all foreign exchange gains and losses from the consolidated financial statements of the respondent's highest-level parent company. This approach recognizes that the critical factor in analyzing the appropriate amount to include in the COP or constructed value ("CV"), is not the source of the foreign exchange gain or loss, but rather how the entity as a whole manages its foreign currency exposure. Companies in the business of producing and selling merchandise are not in the business of speculating with foreign currencies. Thus, in order to minimize the risk of holding foreign-denominated monetary assets and liabilities, companies often engage in a variety of activities from an enterprise-wide perspective to hedge exposure. Therefore, we have included all foreign exchange gains and losses in our calculation.

c. Changes in Monetary Position

Petitioners argue that, with regard to changes in monetary position, in the event that an amount for changes in monetary position is included in calculating exchange gains and losses, only the current portion can be considered. See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Mexico, 67 FR 55800 (August 30, 2002), and accompanying Decision Memorandum at Comment 9. However, petitioners argue that the adjustment need not go further than the financial statement's net gains and losses. At a minimum, petitioners argue that the Department should recalculate the numerator of the financial expense ratio to include all interest and exchange loss expenses, which SICARTSA adjusted downward, despite the fact that it was already a net figure. See SICARTSA's Supplemental D Response at Exhibit 8.

SICARTSA argues that it is the Department's current practice to include the entire gain from changes in monetary position. See Notice of Final Determination Issues and Decision Memorandum for the Final Determination in the Antidumping Investigation of Light-Walled Rectangular Pipe and Tube from Mexico, 69 FR 53677, (September 2, 2004) ("Rectangular Pipe and Tube from Mexico").

Department Position

We agree with SICARTSA. It is the Department's position that it is appropriate to include the entire gain or loss on monetary position because the gain or loss on monetary position reflects the sum of numerous calculations during the course of the year concerning the effects of inflation in each month on all of the company's monetary assets and liabilities, whether short-term or long-term, and whether originally denominated in domestic or foreign currency. See Rectangular Pipe and Tube from Mexico and accompanying Decision Memorandum at Comment 23. Therefore, we have included the changes in monetary position reported by SICARTSA in its financial expense ratio.

d. Consolidated Packing Expenses

Petitioners argue that SICARTSA should subtract the consolidated packing costs from COGS (i.e., the denominator) in calculating the finance expense ratio. Petitioners claim that SICARTSA only adjusted COGS, to account for the packing costs incurred by SICARTSA. See SICARTSA's Supplemental D Response at Exhibit 7. Therefore, petitioners claim that the Department should revise the finance expense ratio to account for packing costs on a consolidated basis.

SICARTSA claims that the Department should not adjust the COGS used as the denominator in the calculation of the financial expense ratio. SICARTSA claims that it is not possible to deduct the packing expenses of the other related companies, because it is not possible to identify those costs using the consolidated financial statement. Further, SICARTSA argues that the calculation is reasonable because it is by far the largest manufacturer in the Group and many of the other companies did not produce goods that use packing materials.

Department Position

We agree with petitioners that the denominator (i.e., COGS) should exclude packing on a consolidated basis, since the per-unit amount of net interest expense is multiplied by the per-unit cost of manufacturing, exclusive of packing. It is the Department's normal practice to exclude packing expenses from the interest expense rate calculation and, based on the best information available on the record, the Department determined that estimating SICARTSA's consolidated packing expenses is reasonable. See Cold Rolled Carbon Steel Flat Products from Germany; Notice of Final Determination of Sales at Less Than Fair Value, 67 FR 62116 (October 3, 2002), and accompanying Decision Memorandum at Comment 17. Therefore, since only SICARTSA's packing was deducted from the consolidated COGS (i.e., the denominator), we have increased packing by an amount equal to the ratio of SICARTSA's packing to COGS to account for all packing included in the consolidated COGS. See May 9, 2005, Final Results Calculation Memorandum – Siderurgica Lazaro Cardenas Las Truchas S.A. de C.V.

Comment 13: Major Input Test

Petitioners claim SICARTSA's affiliated iron ore supplier's costs and transfer prices must be tested against market prices in accordance with 19 CFR 351.407, and that an adjustment is warranted. Petitioners argue that SICARTSA asserted that iron ore transfer prices were "based on" prices from the publication Metal Bulletin (see SICARTSA's Supplemental D Response at 9) and suggests that the prices from the Metal Bulletin are only a reference. Further, since SICARTSA did not report actual market prices, petitioners argue that the Department should use Hylsa's average price of an iron ore product sold by its affiliate to an unaffiliated customer. According to petitioners, this average price can properly be regarded as the market price for iron ore in Mexico during the POR. Furthermore, petitioners argue that all amounts representing COP, transfer price, and market price must include delivery charges.

SICARTSA claims that the Department should not use information regarding sales by Hylsa's affiliate or adjust SICARTSA's reported costs of iron ore. SICARTSA claims that it buys a different product from its affiliated supplier, Las Encinas, than that sold to the third parties. SICARTSA states that it purchases "concentrate," which is iron ore in slurry form from

SERMOSA. See SICARTSA's Supplemental D Response Exhibit 10. Therefore, SICARTSA states that the market price from the Metal Bulletin is used in setting its transfer price for concentrate. See SICARTSA's Supplemental D Response at Exhibit 9.

Department Position

We agree with SICARTSA that the iron ore concentrate it purchases may be a different type of iron ore than that purchased by Hylsa from its affiliate. However, the transfer price of the iron ore concentrate purchased by SICARTSA is below the weighted-average published price in the Metal Bulletin, which is based on market prices. See page 10 of SICARTSA's October 8, 2004, supplemental response. Therefore, in accordance with 19 CFR 351.407(b), we compared the transfer price and the market price to the affiliated supplier's COP and adjusted the reported costs to reflect the highest of the three amounts. See e.g., Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18448, 18456 (April 15, 1997).

Comment 14: Ministerial Errors

SICARTSA argues that the Department made several ministerial errors in the programs used to calculate the preliminary antidumping duty margin. First, it claims that the Department did not update the variable cost, total cost, general and administrative costs, and interest expense reported in the cost database, after adjusting the cost of manufacture to account for affiliated party inputs. SICARTSA also claims that the Department should include packing costs in its COP and constructed value. Second, SICARTSA claims that the Department treated indirect selling expenses made in pesos as U.S. dollars. Third, SICARTSA claims that the Department inadvertently subtracted imputed inventory carrying costs from the calculation of the indirect selling expenses used in the cost test. Finally, SICARTSA explains that the Department incorrectly added, rather than subtracted, the variable for debit notes.

Petitioners disagree with SICARTSA's allegation that the Department improperly failed to consider packing in its recalculations of COP and CV. Petitioners argue that SICARTSA did not include packing in its total cost of manufacture and that it is typical to exclude packing from the reported cost of manufacturing.

Department Position

We agree with SICARTSA, in part. We have corrected our calculations in order to reflect the ministerial errors noted by SICARTSA above, with the exception of adding packing to the total cost of manufacturing. The Department does include packing in calculating the cost of manufacturing. As explained in Comment 12 above, it is the Department's practice to deduct packing expense when calculating the financial expense ratio. Therefore, since packing is excluded from the financial expense ratio as well as the G&A expense ratio, it would be inappropriate to calculate financial expense and G&A expense after adding packing to the cost of manufacturing.

Furthermore, the Department's questionnaire requested the respondent to include packing in its response to the home market and U.S. sales response. In accordance with section 772(c)(1) of the Act, we add the U.S. packing expenses to the export price. In accordance with section

773(a)(6) of the Act, we subtract the home market packing expenses and add the U.S. packing expenses to normal value ("NV"). Therefore, we have not included packing expenses in the total cost of manufacturing.

Comment 15: Treatment of Negative Dumping Margins

SICARTSA argues that the Department should not exclude negative dumping margins in the final results. SICARTSA claims that the Department's practice of "zeroing" negative dumping margins is inconsistent with the methodology provided by U.S. law, and the treaty obligations of the United States embodied in the AD agreement. See Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Article 2.4.2 ("AD Agreement"). Further, SICARTSA argues that the WTO Appellate Body recently decided that the practice of zeroing is not permissible and is in violation of the AD Agreement because it does not allow for a fair comparison of NV and export transactions. See United States - Final Dumping Determination on Softwood Lumber from Canada, WT/DS264/AB/R (August 11, 2004) ("Softwood Lumber from Canada").

Petitioners state that the Department should affirm its practice according to the recent CAFC ruling on "zeroing" negative dumping margins. Petitioners claim that the Department should not adjust its calculations. Petitioners state that the assertion that the Department is prohibited from "zeroing" negative dumping margins is without merit. Petitioners state that CAFC has recently affirmed the Department's continued practice of zeroing in all respects. See Corus Staal v. Department of Commerce, Court No. 01-1107 (January 21, 2005) ("Corus Staal"). Petitioners also cite a recent decision with regard to this issue. See Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Mexico, 70 FR 3677 (January 26, 2005).

Department Position

We agree with petitioners. As stated by the petitioners, the practice in calculating weighted-average dumping margins was upheld by CAFC in Corus Staal. As discussed below, we include U.S. sales that were not priced below NV in the calculation of the weighted-average dumping margin as sales with no dumping margin. The value of such sales is included in the denominator of the weighted-average margin along with the value of dumped sales. We do not, however, allow U.S. sales that were not priced below NV to offset dumping margins found on other sales.

Section 771(35)(A) of the Act defines the dumping margin as "the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." Section 771(35)(B) of the Act defines the weighted-average dumping margin as "the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer." The Department applies these sections by aggregating all individual dumping margins, each of which is determined by the amount by which NV value exceeds EP or CEP, and dividing this amount by the value of all sales. The use of the term aggregate dumping margins in section 771(35)(B) of the Act is consistent with the Department's interpretation of the singular dumping margin in section 771(35)(A) of the Act as applying on a comparison-specific level and not on an aggregate basis. At no stage of the process is the amount by which EP or

CEP exceeds the NV on sales that did not fall below NV permitted to cancel out the dumping margins found on other sales.

This does not mean, however, that non-dumped sales are ignored in calculating the weighted-average dumping margin. It is important to note that the weighted-average margin will reflect any non-dumped merchandise examined during the POR: the value of such sales is included in the denominator of the weighted-average dumping margin, while no dumping amount for non-dumped merchandise is included in the numerator. Thus, a greater amount of non-dumped merchandise results in a lower weighted-average margin.

Furthermore, this is a reasonable means of establishing estimated duty-deposit rates in investigations and assessing duties in reviews. The deposit rate we calculate for future entries must reflect the fact that, U.S. Customs and Border Protection ("CBP") is not in a position to know which entries of subject merchandise are dumped and which are not. By spreading the liability for dumped sales across all reviewed sales, the weighted-average dumping margin allows CBP to apply this rate to all merchandise subject to review.

Finally, with respect to respondent's WTO-specific arguments, we note that U.S. law, as implemented through the Uruguay Round Agreements Act, is fully consistent with our WTO obligations. As stated in Wire Rod Canada 3 with respect to implementing the URAA in the case of Softwood Lumber from Canada, Congress made clear that reports issued by WTO panels or the Appellate Body "will not have any power to change U.S. law or order such a change." Statement of Administrative Action ("SAA") at 660. See Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada, 69 FR 68309 (November 24, 2004), and accompanying Decision Memorandum at Comment 8 ("Wire Rod from Canada 3"). The SAA emphasizes that "panel reports do not provide legal authority for federal agencies to change their regulations or procedures." Id. To the contrary, Congress has adopted an explicit statutory scheme for addressing the implementation of WTO dispute settlement reports. See 19 U.S.C. § 3538. As is clear from the discretionary nature of that scheme, Congress did not intend for WTO dispute settlement reports to automatically trump the exercise of the Department's discretion in applying the statute. See 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary); see also, SAA at 354 ("After considering the views of the Committees and the agencies, the Trade Representative may require the agencies to make a new determination that is 'not inconsistent' with the panel or Appellate Body recommendations..." (Emphasis added). See Wire Rod from Canada 3.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results and the final weighted-average dumping margins in the Federal Register.

Agree _____ Disagree _____

_____
Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

_____
Date